Supreme Court, U.S.
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No.

IN THE
Supreme Court of the United States

BENJAPON SAKKARAPOPE,
Petitioner,

V.

THE BOARD OF REGENTS OF
WASHINGTON STATE UNIVERSITY,
LEROY S. ROOKER,
Director of Family Policy Compliance Office,
THE SECRETARY OF
THE UNITED STATES DEPARTMENT OF EDUCATION,
and
ALBERTO R. GONZALES, Attorney General,
Respondents.

On Petition For Writ Of Certiorari
To The Court of Appeals For The State of Washington, and
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Volume I

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QUESTIONS PRESENTED FOR REVIEW

1. Washington State University dismissed Sakkarapope from the IIDP and its joint master degree program in statistics without affording the student any due process hearing; the IIDP disputed examination was never reviewed by an independent committee with proper academic expertise in the student's academic areas of study; withholds his educational records on the portion of the preliminary examination that the University claimed Sakkarapope received failing grades, but disclosed the examination on the portion he received a passing grade; the Secretary of the U.S. Department of Education, and LeRoy Rooker closed Sakkarapope's FERPA complaint without finding; the trial court dismissed his Petition for Review for lack of jurisdiction; the state Court of Appeals affirmed the trial court's decision; the U.S. District Court and the U.S. Court of Appeals dismissed a civil complaint:

> Whether the State of Washington, the Board of Regents for Washington State University, The Scretary of the U.S. Department of Education, LeRoy Rooker, the Courts of Appeals, and the state trial court have violated and deprived Sakkarapope's due process right and liberty interests which is prohibited under the Fourteenth Amendment and State Cont. Article I Sec. 3 and 4

2. While the judicial reviews of the University's decisions and actions under the state Administrative Procedure Act--RCW 34.05 and of a remedial action under the state civil service law--RCW 41.06 have been pending in the state courts, the University requested the BCIS to initiate a removal proceeding in the Immigration Court; the

Immigration Judge entered a removal order; the Board of Immigration Appeals affirmed the IJ's decision; the U.S. Court of Appeals dismissed and denied Sakkarapope's Petition for Review for lack of jurisdiction:

> Whether the Attorney General; the IJ, the BIA and the U.S. Court of Appeals have deprived Sakkarapope's due process rights and his liberty interests in the remedial action and continued in the academic programs, which is prohibited by the Fourteenth Amendment, and State Cont. Article I Sec. 3 and 4.

3. Whether FERPA §1232g(a)(1); §1232g(f) and (g), creates a federal right to inspect and review of educational records and **"a federal due process right"** guaranteed by the Fourteenth Amendment.

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NOTICE

This Petition is directly related to a Petition For Writ Of Certiorari Case Number 06-412* previously denied by this Court. It arose from the same causes in this Petition, however, it reached this court sooner. The portions of issues and supporting records are incorporated within this Petition as deemed appropriate where the issues are directly related. The Petition For Writ Of Certiorari Case Number 06-412 should be part of the Appendix to this Petition for the court consideration. The supporting documents previously filed in this court are not duplicate in the newly appendix, but directly cited into it.

Due to time and resource limitation, the pleadings of Respondents in the lower courts are not reformatted/retyped in the Appendix. Respondents are requested to provide supplemental appendix as deemed appropriate. Since Respondents have digital versions of its own pleadings, it would be more accurate and efficient.

Citations:

- The "Petition For Writ Of Certiorari Case Number 06-412" is cited as "Pet. 06-412."
- The "Appendix to Petition For Writ Of Certiorari Case Number 06-412" is cited as "App. Pet. 06-412."
- The records in the U.S. Court of Appeals Case No. 05-75413:
    - Excerpts of Records as "U.S. COA Excerpt."
    - Brief for Petitioner and Reply as "Br. Pet" and "Reply Br. Pet."

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* The Petition should have been presented before this court together in this first place.

- Clerk's Paper in the Court of Appeals for the State of Washington is cited as "Clerk's Paper or CP."
- WSU's Certified Records in the Whitman County Superior Court is cited as "CR."

I. JURISDICTIONAL STATEMENTS

1. This Petition for Writ of Certiorari is from a final judgment of the State of Washington Court of Appeals terminating a review of the Whitman County Superior Court's judgment on Motion for Summary Judgment that disposes of all parties' claims:

a. Pursuant to RCW 34.05 (Administrative Procedure Act (APA)) and RCW 42.17.340 (Public Records Disclosure Act (PDA)), a Petition for Review of Washington State University's decisions and actions was filed with the Whitman County Superior Court on July 23, 2003. A final judgment was entered March 5, 2004. (Appendix (App.) 12-29)

b. The Court of Appeals, Division III, terminated review on September 8, 2005, denied reconsiderations on January 5 and February 1, 2005, and issued a Mandate on October 26, 2006, rendering the September 8, 2005 decision became the decision terminating review on October 10, 2006. (App. 1-12)

c. The Supreme Court for the State of Washington denied stay enforcement of the trial court's decision on February 1, 2005, and Petition for Review on **October 10, 2006**. (App. 61-68, 84-87)

2. This Petition for Writ of Certiorari is also from a final judgment of the United States Court of Appeals for the Ninth Circuit dismissing in part and denying in part of a Petition for Review of an Order of the Board of Immigration Appeals:

a. The Immigration Judge ("I.J.") entered its decision in on April 23, 2004, in a removal proceeding. The Board of Immigration Appeals ("BIA") entered a final order of removal on September 12, 2005. (U.S. COA Excerpt Vol. I 1-4, 103-111)

b. The Court of Appeals for the Ninth Circuit rendered its decision in an unpublished Memorandum

filed December 13, 2006, by a panel of Circuit Judges, GOODWIN, LEAVY, and FISHER. (App. 43-44)

3. This Petition for Writ of Certiorari is from a final judgment of the United States Court of Appeals for the Ninth Circuit affirming the District Court on Motion for Summary Judgment that disposes of all parties' claims.

a. The original Complaint was filed in the United States District Court, Eastern District of Washington (Spokane) on February 24, 2004. The District Court has jurisdiction under Civil Rights Act 42 U.S.C. §1983; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C §1232g; 34 C.F.R. 99, and WAC 504-21; and Fed. APA 5 U.S.C. 554 et. seq. The District Court entered a final judgment on June 22, 2004.

b. The Court of Appeals for the Ninth Circuit rendered its final decision in an unpublished Memorandum filed February 22, 2006. A petition for panel rehearing and rehearing en banc was denied on June 8, 2006, and a final judgment was entered June 27, 2006. A Petition for Writ of Certiorari was filed with this court Case No. 06-412, and later denied on November 27, 2006.

4. This Supreme Court has jurisdiction to review a final judgment of the Courts of Appeals. 28 U.S.C §1254; Rule 10.

II. CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THE CASE

1. The Fifth, Eleventh and Fourteenth Amendments.
2. 20 U.S.C §1232g; 34 C.F.R. 99, and WAC 504-21. (App. Pet. 06-412 at 99-122)
3. Federal Administrative Procedure Act (APA), 5 U.S.C. 554; 5 U.S.C. 555. (App. Pet. 06-412 at 72-80)

4. State Administrative Procedure Act (APA), RCW 34.05. (App. Pet. 06-412 at 81-95)
5. Civil Rights Act, 42 U.S.C. §1983.
6. WAC 504-04. (App. Pet. 06-412 at 96-98)
7. Immigration and Nationality Act (INA) 101(a)(15)(F), 237(a)(1)(C)(i), and 8 C.F.R. § 214
8. Washington State Civil Service Law, i.e., RCW 41.06. 41.64, and WAC 251-12-600 (Remedial Action)
9. *Gonzaga v. Doe*, 536 U.S. 273, 287 (2002).
10. *Horowitz v. Board of Curators of the Univ. of Missouri*, 435 U.S. 78 (1978); *Schuler v. University of Minnesota*, 788 F.2d 510, 514 (8th Cir. 1986).

III. STATEMENTS OF THE CASES AND FACTS*

Sakkarapope was NOT a regular student like those who came to schools in the States on their own initiatives. His initial admission to a graduate program at Washington State University (University/WSU) in Business Administration and four years financial assistance were arranged by the University, while he was an Associate Dean at Prince of Songkla University, Thailand. (Clerk's Papers (CP) 101-3) The University failed to meet its commitment at the end of 1994 spring semester and forced Sakkarapope to leave the initial program. Despite of unfortunate difficulties, he had continuously enrolled and loyally stayed at WSU through various programs from an Intensive American English Program to doctoral programs.

While enrolled in the Individual Interdisciplinary Doctoral Program (IIDP), Sakkarapope declared a master degree program in statistics as a joint degree program in 1999†. In spring 2000 semester, Sakkarapope had an

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* *See also*, additional details in App. 358-370; App. Pet. 06-412 at 138-145, 168-172, 177-179, 191-203, 253-269, 272-311, and 322-348.

† The IIDP is a special program option tailor-made for individual student across at least three degree granting academic departments, approved by the Graduate Studies Committee (GSC), based upon a proposed agreement of the contents and procedures of the individual program of

academic dispute with Washington State University preliminary examination (IIDP prelim exam). When realizing that his advisory committee did not fulfill its obligations as prescribed in the program of study individually approved by the Graduate Studies Committee and the agreed content and format of the prelim examination, Sakkarapope had disputed with Kenneth Duft, chair of the advisory/ examination committee, and requested the committee be re-convened to solve the dispute, and his request was denied. *See* App. 129-152, 169-170, 207-30.

Duft prematurely and arbitrarily terminated Sakkarapope's IIDP program of study at the end of the written portion of the IIDP prelim exam. After being informed a procedure governing the IIDP that Sakkarapope cannot be terminated prior to an oral examination portion taken place as the written and oral examinations constitute one preliminary examination, Duft scheduled for a walking-through-oral examination on February 11, 2000 and then formally terminated Sakkarapope from the IIDP on April 26, 2007 based on a false claim that Sakkarapope had failed the examination twice. With an objection to the false claim, Karen DePauw changed the basis of its decision by adopting an unpublished policy to arbitrarily terminate him from the program anyway. (App. 115-6, 231-7)

Sakkarapope has continuously appealed the IIDP dismissal through the procedures described in the Adjudication of Rights and Responsibilities of the Graduate Student Code, providing appeal procedure under the Graduate School and in the Faculty Manual providing a

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study between the student and advisory committee. Dean of Graduate School is the secretary to the GSC, and the department chair of the IIDP. A joint master program degree in statistics is also a special program option that allows a student to pursue two degrees at the same time by sharing the same course work within the scope of the doctoral program, but both programs are administered separately. It cautiously noted that not all general graduate school policies and procedures are applicable to these special program options. *See*, App. 139-52, 169-72; COA Addendum to Brief of Petitioner 66-71.

procedure for individuals to make "a direct appeal" before the Board of Regents through the University president (App. 159-60; WSU Faculty Manual on page 6; CP 271-3; App. 207-331).

The IIDP department did not conduct any academic review as DePauw bypassed her review as department chair to the Graduate School. (App. 107-20) Although the Graduate Student Code stipulates that a strictly academic appeal be handled the Associate Dean, Herbert Hill, a professor in Chemistry, conducted and rendered an academic decision by himself without a proper academic expertise in Sakkarapope's IIDP program of study--three disciplines, Economics, Agricultural Economics, and Finance. In response to Sakkarapope's objection and request for a proper academic review, DePauw appointed a so-called Graduate Student Rights and Responsibilities (CGSRR), chaired by Howard Grimes. The CGSRR comprised of three members, Grimes, a professor in Molecular Biosciences, Jim Harsh, a professor in Chemistry in Crops and Soil Sciences, and Sally Blank, a professor in Kinesiology*. (App. 114, 117-20)

In formal proceedings pursuant to, the APA--RCW 34.05.413 through 34.05.476, WSU has adopted the model rules of procedure adopted by the office of administrative hearings, WAC 10-08 since 12/23/1989. WAC 504-04-110. Not only the CGSRR did not conduct any hearing in compliance with RCW 34.05 and the Adjudication of Rights and Responsibilities of the Graduate Student Code, but also confidentially operated its own secret interview and rendered a slam-dunk decision of September 19, 2000. (App. 114) The academic expertise of the CGSRR members in Molecular Biosciences, Chemistry and in Kinesiology and Hill's in Chemistry is incompatible and has nothing to do with Sakkarapope's academic area of study.

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* These three members of CGSRR were also members of the Gradate Studies Committee which approved Sakkarapope's IIDP program of study in March 1999.

Nonetheless, where the 2000 IIDP prelim examination in dispute was never reviewed by any independent committee with proper academic expertise, DePauw arbitrarily concurred with Hill's, the CGSRR and the Advisory/examination committee on October 10, 2000. (App. 107-114)

Sakkarapope had persistently appealed the decisions through the University administrative channels, the Provost, the President and the Board of Regents. Where the University never conduct any hearing in compliance with the APA--RCW 34.05.413 et. seq., as prescribed in WAC 504-04-110, an application for adjudicative proceeding was filed before the Board of Regents in January 2003, but his appeals were ignored. The University did not either commence an adjudicative proceeding or dispose of such application as prescribed in RCW 34.05.423, 416. (App. 271-331)

Through public record and FERPA requests, Sakkarapope had made a series of requests for his educational records relating to the IIDP examination and the appeals. Grimes, who had custody of Sakkarapope's education records, did not release the records of the CGSRR. To date, **January 8, 2007**, the University released the records of the IIDP examination on the portion that he received a passing grade, but withholds or destroyed the portions of the claimed failing grades.* Not only the University did not properly afford him a due process hearing under FERPA, but also Grimes premeditatedly retaliated Sakkarapope by issuing a series of memoranda leading to the termination of January 31, 2003 from his joint master degree program. No hearing was afforded.

The IIDP prelim exam dispute led to a series of litigations in both state and federal courts:

(1) A Petition for Review of the University's decisions and actions was filed with the Whitman County Superior Court on July 23, 2003, pursuant to the state

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* *See,* Kenneth Duft's June 7, 2002, email to Kirsten Pauli.

Administrative Procedure Act, RCW 34.05. A final judgment dismissing the Petition was entered March 5, 2004, based on an untimely petition. The Court of Appeals, Division III, terminated review on September 8, 2005, denied reconsiderations on January 5 and February 1, 2005. (App. 1-29) The Supreme Court for the State of Washington also denied stay enforcement of the trial court's decision on February 1, 2005, and Petition for Review on October 10, 2006. (App. 61-68, 84-87)

(2) After unsuccessful attempts to exercise his rights to inspect and review his education records, Sakkarapope requested for a hearing to release his education records on December 5, 2001. Instead of the "Registration and Records Committee" as designated in the Committee Manual, the Student Records Committee ("SRC"), an ad hoc committee, was formed to hear FERPA issues under WAC 504-21-040, (App. Pet 06-412 at 99-109), and prohibited an advisor to directly address the committee or advocate on his behalf. Despite of Sakkarapope's objection to the SRC's authority, the SRC arbitrarily conducted a hearing and rendered its slam-dunk decision of April 5, 2002, stating "the University has fully complied with your request for the release of education records under FERPA." (App. Pet 06-412 at 53-58) A FERPA complaint was filed with the Family Policy Compliance Office ("FPCO") on September 27, 2002, and LeRoy S. Rooker, Director, later refused to enforce the FERPA federal due process. The Petition was denied on January 20, 2004, stating "closing this matter without a finding..." (App. Pet. 06-412 at 59-70, 322-335)

A civil complaint was filed in the United States District Court, Eastern District of Washington (Spokane) on February 24, 2004. Based on the Whitman County Superior Court's judgment of March 5, 2004, the District Court entered a final judgment on June 22, 2004, that disposes of all parties' claims. The Court of Appeals for the Ninth Circuit rendered its final decision in an unpublished Memorandum filed February 22, 2006, and denied a petition for panel

rehearing and rehearing en banc on June 8, 2006. A Petition for Writ of Certiorari was filed with this court Case and later denied on November 27, 2006. (App. 30-42; App. Pet. 06-412 at 123-132)

(3). The University not only terminated Sakkarapope's enrollment, but also his on campus employment on February 24, 2003. Where the University did not make the employment appointments in compliance with the state civil service law, a remedial action was requested pursuant to WAC 251-12-600. The Department of Personnel and the Personnel Appeals Board denied Sakkarapope's request for remedial action on July 8, 2003, and October 5, 2004, respectively. A Petition for Review of the PAB's Order was filed with the Thurston County Superior Court on October 11, 2004. A final judgment was entered December 22, 2006, finding that the PAB's committed error of law, reversing the PAB's Order, and remanding the matter back to the DOP for further proceeding. (App. 89-90).

(4). On January 31, 2003, Grimes premeditatedly terminated Sakkarapope's enrollment from a master program in Statistics retroactively effective January 10, 2003. On 6/9/2003, Ms. Mary Furnari informed Mr. Daniel Hanson, the BCIS, that the University entered Sakkarapope into the SEVIS system and terminated him on the same day, on May 1, 2003, and asked the BCIS to take action. While the BCIS by Diana M. Wolder (9/18/2003) has recognized that a petition for review of the University's decisions and actions has been active in the state courts: "We need your advice on how to responds to the petition attached. The petitioner is no longer attending school. ICE is ready to issue NTA. Should we issue NTA while this issue between the petitioner and school is outstanding?," Mr. Hanson took action according to Ms. Furnari's request. (App. 453-9)

A removal proceeding was initiated and held on April 22, 2004. The Immigration Judge ("I.J.") entered its decision in on April 23, 2004. The Board of Immigration Appeals ("BIA") entered a final order of removal on September 12,

2005. (U.S. COA Excerpt Vol. I 1-4, 103-111) The Court of Appeals for the Ninth Circuit rendered its decision on December 13, 2006. (App. 43-44)

The state and federal courts of appeals have decided important constitutional questions:

(i) The U.S. District Court's and the U.S. Court of Appeals' decisions raised an important federal question sought to be reviewed in this court directly involving with the interpretation of the Supreme Court's precedent in *Gonzaga University v. Doe*, 536 U.S. 273, 276 (2002), and whether FERPA §1232g(a)(1); §1232g(f) and (g), creates "**a federal due process right**" guaranteed by the Fourteenth Amendment and then actionable under §1983 as well as a question of exceptional importance. *Gonzaga v. Doe*, 536 U.S. 273, 122 S.Ct. 2268, 153 L. Ed. 2d. (2002); *State of Maine v. Thiboutot*, 448 U.S. 1 (1980). (Pet. 06-412) Although the Petition 06-412 was earlier denied by this court, these important legal questions remain unanswered and are directly related to this Petition.

(ii) The U.S. Court of Appeals has decided an important federal question whether a removal of a student holding an F-1 visa status while the judicial reviews of the University's decisions and actions under RCW 34.05 and RCW 41.06, are active, and whether the IJ denied adjustment of status to that of permanent resident have deprived Sakkarapope's due process rights and his liberty interest of the remedial action, which is prohibited by the Fourteenth Amendment. Alternatively, whether such the IJ's, BIA's and the Court of Appeals' decisions are unconstitutional is an important question of law and has national implication.

(iii) The state Court of Appeals has decided an important constitutional question of due process right in dismissing Sakkarapope's Petition for Review based on an untimely petition in such way that his due process right and liberty interest have been deprived. Whether the dismissals from the IIDP and its joint master degree program in

statistics meets the minimal requirement in the meaning set forth by this Court in *Horowitz v. Board of Curators of the Univ. of Missouri,* 435 U.S. 78 (1978), and as interpreted by the U.S. Court of Appeals in *Schuler v. University of Minnesota*, 788 F.2d 510, 514 (8th Cir. 1986), raises a constitutional question. As such, whether the state has deprived Sakkarapope's due process rights in regard to the academic dismissals and the student's liberty interest to continue in the programs, which is prohibited by the Fourteenth Amendment.

IV.
ARGUMENTS

A. The State and Its Actors Are Prohibited to Deprive Any Person of Life and Liberty without Due Process of Law under the Fourteenth Amendment

The Courts of Appeals' decisions are unconstitutional as it violated the due process and equal protection clauses of the Fourteenth Amendment and the State Constitution Article I Section 3 and 4. The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amends. V, XIV, § 1.2 The due process clause of the Fourteenth Amendment confers both procedural and substantive protections. *Albright v. Oliver*, 510 U.S. 266, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994). When a state seeks to deprive a person of a protected interest, procedural due process requires that an individual receive notice of the deprivation and an opportunity to be heard to guard against erroneous deprivation. *Mathews v. Eldridge*, 424 U.S. 319, 348, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The opportunity to be heard must be "'at a meaningful time and in a meaningful manner,'" appropriate to the case. Id. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965)).

The Washington Constitution imposes the "paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex." State Const. Article IX, § 1. A right to education is a fundamental right. The Washington Constitution also provides equal, but not greater, due process protection, *In re Personal Restraint of Dyer,* 143 Wn.2d 384, 394, 20 P.3d 907 (2001). Substantive due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures. *Halverson v. Skagit County*, 42 F.3d 1257, 1261 (9th Cir. 1994). State interference with a fundamental right is subject to strict scrutiny. *In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 57, 10, 109 P.3d 405 (2005). Strict scrutiny requires that the infringement is narrowly tailored to serve a compelling state interest. *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997). The United States Supreme Court has recognized certain liberty interests protected by the due process clause but not explicitly enumerated in the Bill of Rights.

A "property interest" in continued attendance and school officials' obligations to afford a minimal due process were recognized that the student should be accorded an opportunity to appear personally to contest such allegation. *Gaspar c. Bruton*, 513 F.2d 843, 850-51 (10th Cir. 1975); *Goss v. Lopez*, 419 U.S. at 584, 95 S.Ct. at 741 [519 F 2d at 9]; *Board of Regents v. Roth*, 408 U.S. at 573, 92 S. Ct. at 2707. Thus, a "hearing" is required to be held before the final order becomes effective. *Shirley Bowing v. Board of Trustee of Green River Com. College,* 85 Wn.2d 300(1975); *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d 832 (1969).

Washington State University (WSU) is a state institution of higher education created by law to provide higher education within the State. RCW 28B.10.016; State Const. Article XIII , § 1. WSU is prohibited from depriving any person of life, liberty, or property, without due process of

law. The fundamental right, "right to education," is protected by the state constitution. The State subscribes a due process of law in the Administrative Procedure Act (APA), RCW 34.05, in which WSU is not exempted from the Act. An adjudicative proceeding in compliance with the APA, is due process to which WSU shall afford its students. "Academic dismissals are not excluded" from the APA. (Clerks' Paper (CP) at 1215) Administrative and judicial review proceedings under RCW 34.05 are student's due process of law. "The University's obligation was to afford Mr. Sakkarapope due process in arriving at a decision. *Horowitz*, 435 U.S. at 79-80." (CP 991). WSU conceded in its own wards that:

> The APA governs all judicial review of agency orders and actions unless the action is expressly excluded by the Act. RCW 34.05.010 and RCW 34.05.030. Academic dismissals are not excluded and the APA is the sole mechanism for Mr. Sakkarapope to file his appeals of his academic dismissals. (CP at 1215)

In formal proceedings pursuant to, the APA--RCW 34.05.413 through 34.05.476, WSU has adopted the model rules of procedure adopted by the office of administrative hearings, chapter 10-08 WAC since 12/23/1989. WAC 504-04-110. Nothing in the APA may be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. RCW 34.05.020

Further, WSU's Graduate Student Code adopted an adjudication of rights and responsibilities supplemental to WAC 10-08, WAC 504-04-110 and provides that strictly academic issues are typically handled by the Associate Deans of the Graduate School and the CGSRR will operate with due respect to the rights of all parties to review and rights to a fair hearing. The Provost will consider appeals based on procedural irregularity. In all instances, the University seeks fair and expeditious action on academic and conduct issues.

Resolutions must uphold the highest standards of academic freedom and integrity. (App. 159-60)

The Graduate School policy was intended to relieve professors and departments of the details of administration, permitting maximum freedom in decision-making consistent with established policies and with high standards of graduate education. (App. 162-3) All departments/programs must make an annual review of each graduate student:

> During spring semester, the department/program chair will give written notification to each graduate student of his/her performance. After appropriate faculty have been consulted, the names of those students to be dropped from a program shall be sent to the Dean of the Graduate School. (App. 175-6)

WSU expressly established graduate rights and expectations that graduate students at WSU shall maintain the right: "To be governed by clearly stated and justifiable academic procedures, rules, and regulations," and "To be accurately informed of program requirements and expectations upon enrollment." Graduate students at WSU shall also maintain the expectation that departments and programs "**Establish criteria for termination of students from programs.**" Graduate students at WSU shall also maintain the expectation that advisors and mentors will "Provide explicit and well-publicized dismissal and appeal procedures." (App. 154-8)

Therefore, graduate student's rights and expectations were clearly established. WSU is obligated to maintain them as part of educational contract. Where WSU adopted rules and procedures, i.e., WAC 504-04-110, WAC 10-08, thus, under the state constitution, an academic dismissal is fully protected of a due process under the state law greater than that of the minimal due process requirement under the federal constitution; both dismissals from the IIDP and the master programs are fully protected under the APA, RCW 34.05, which is to provide a student a greater protection of due

process of law than that of the federal constitution to protect the fundamental right, right to education.

B. The IIDP Dismissal Was Arbitrary, Capricious and/or Abused of Discretion, and Violated the Terms of Student-Institution Contract.

Where a grade has been award improperly, the courts must determine whether the University's action reflected the application of academic judgment or arbitrary or unfair application of institutional policy. A student dismissal motivated by bad faith, arbitrariness, capriciousness, or a manifest abuse of discretion may be actionable. *Connelly v. University of Vermont,* 244 F. Supp. 156 (D. Vt. 1965) at 159-60; *Gaspar v. Bruton,* 513 F.2d 843 (10th Cir. 1975) at 850-51; *Board of Curators of the University of Missouri v. Horowitz,* 435 U.S. 78(1978).

By relying on *Horowitz*, the U.S. Supreme Court addressed the subject of the standard of review of academic judgments that judges may not override the substance of a genuinely academic decision unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment. *Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 225 (1985). The Court assumed without deciding the issue that the student had a property interest in continued enrollment, and noted that it was not the school's procedures that were under review—the question was whether the record compels the conclusion that the University acted arbitrarily in dropping the student from the program without permitting a reexamination.

As indicated above, the records in this instant case clearly show that the advisory/examination committee prematurely and unfairly terminated Sakkarapope from the IIDP before the examination even completed. It did not have a proper understanding of the procedures governing the IIDP. When it learned that it could not do so, the oral examination was prejudicially held; it was just scheduled to fulfill the

formal procedure. Duft refused to reconvene the committee to solve the dispute in good faith and has withheld or destroyed the records* of the examination on the portion he claimed Sakkarapope received failing grades.

Where the Graduate School normally allows a student to retake the examination and the advisory committee reaffirmed Sakkarapope that he would be allowed two attempts to pass the examination (*see*, Holly Wang's handwritten note of the minutes of the October 19, 2000 committee meeting; CR PR #02-56 at 296-435; CR 245-61), the University by DePauw dropped Sakkarapope from the program with a false claim that he had failed the exams twice and then later simply changed to that he was not recommended a second attempt. (CR 243-4) Thus, the University acted arbitrarily in dropping the student from the program without permitting a reexamination by the standard of *Regents of the University of Michigan v. Ewing*, Id.

Moreover, the IIDP is a tailor-made for individual student. The program of study and related procedures must be individually approved by the Graduate Studies Committee. The content and format of examination must be established based on the agreement between the student and his advisory committee prior to the exam taken place. Such conditions including other related policies published in the Graduate Student Code, the IIDP Faculty/Student Handbook, and the Graduate School Policies and procedures, constitute the terms of student-institution contract. The refusal to abide by Sakkarapope's approved IIDP program of study and the agreed content and format of the examination constitutes a breach of the educational contract. The University is estopped to dismiss Sakkarapope from the program without fulfilling its contractual terms. (App. 111-2, 125-8)

The Supreme Court found that Horowitz had no right to a hearing, but does not say that no due process is required. In applying *Horowitz,* the court noted that:

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* Per Kenneth Duft's email to Kirsten Pauli dated June 7, 2002.

> Dismissal of a student for academic reasons comports with the requirements of procedural due process if the student had prior notice of faculty dissatisfaction with his or her performance and of the possibility of dismissal, and if the decision to dismiss the student was careful and deliberate....The University's noncompliance with its own grievance appeal procedures would not violate Schuler''s right to procedural due process, because the hearing she received at the department level exceeded the process constitutionally required to protect her interest in continued enrollment at that institution [*Schuler v. University of Minnesota*, 788 F.2d 510, 514, 515 (8th Cir. 1986)].

Under the Constitution of the State of Washington, a due process hearing is constitutionally required under the state RCW 34.05, which is the case that the state provides a procedural safeguard in academic dismissal beyond that of the fourteenth amendment. Where the University refused to disclose the records of the exam on the portion it claimed that Sakkarapope received failing grades and that of the appeal process, and did not properly afford him a due process at both department and the Graduate School levels, as well as refused to abide by the terms of the student-institution contract as prescribed in the approved program and the agreed content and format of the examination. Kenneth Duft also showed his prejudice and bad attitude toward the student in his memorandum dated May 8, 2000 that:

> "Given the long and sordid history attached to this gentleman's course of study here at WSU, it occurred to me that you and I might wish to visit about this note from the Graduate School before I construct a reply. Herb Hill has also been attempting to reach me by phone, but I'll withhold my response until we can discuss this matter." (CP 306)

The University never commenced any adjudicative proceeding. All decisions were arbitrarily and capriciously rendered in bad faith. The discretion was manifestly abused. The IIDP Preliminary examination was never properly reviewed by any committee having academic expertise in the student's academic area of study. (CR 64-71, 74-8, 170-86, 245-61). Herbert Hill was NOT authorized and has no academic expertise to make the academic decision. The CGSRR's members do not have academic expertise in the student's academic areas. (CR 193-209; Grad. CR 392-430).

The CGSRR not only did not conduct any hearing pursuant to WAC 504-04, WAC 10-08 and the Adjudication of Rights and Responsibilities of the Graduate Student Code, but also secretly performed investigative function in violation of the APA, RCW 34.05.458. Then the CGSRR arbitrarily rendered its decisions of September 1, 2000. Dean DePauw then rendered its slam-dunk decision of October 10, 2000 concurring with the examination committee, Hill and the CGSRR. Without conducting any hearing on review, Interim Provost Ronald Hopkins arbitrarily rendered its slam-dunk decision of February 1, 2001. The Board of Regents denied access where it provides a procedure for a direct appeal as described in the Faculty Manual page 6:

> "The approach to the Board of Regents is through the President of the University, who is secretary ex officio of the Board. Any University committee or individual shall be accorded the opportunities to present a direct appeal to the Board of Regents through this channel."

An application for adjudication pursuant to the APA was subsequently filed with the Board of Regents. No response was provided and no adjudicative proceeding was commenced. Sakkarapope showed his full intention and appeared before the Board at the meeting dated January 24, 2003, was not allowed to address the matters before the Board. (CR 883-90) A petition to enforce the oath of office

of the Board was also filed with the Governor. Further, WSU's counsel, Steve Vinsonhaler, communicated with the official of the Office of the Governor to prevent an action from the Governor:

> "Do not respond to this fellow. ATG has been interacting with him for nearly 10 years-they've advised him to get an attorney. He's currently in the US in an expired student VISA, and has been reported to INS. He had every opportunity to successfully complete his studies, but did not perform. DON'T ENGAGE HIM, or a pen pal he will be." (CP 97-315 at 151)

A court has subject matter jurisdiction to decide whether the official procedures used in assigning a student a particular grade were arbitrary and capricious. *OCHSNER v. BOARD OF TRUSTEES,* 61 Wn. App. 772, 773, 811 P. 2d 985 (1991) Under the Graduate Student Code, Sakkarapope has rights and expectations while WSU has duty to maintain them, (CP 261-271), to publish rules and procedures, RCW 42.17.250, to notify administrative remedies available, and to fulfill faculty responsibilities. In the presence of clearly shown constitutional flaws in the "administrative process," i.e., *Cuddy v. Department of Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617(1968), the dismissal from the program violated and deprived Sakkarapope's due process right and liberty interest. The dismissal was not careful and deliberate; it violates Sakkarapope's right to procedural due process under both state and federal standard requirements. WSU breached the educational contract.

C. The Dismissal from the Master Degree Program in Statistics Was Arbitrary, Capricious and/or Abused of Discretion.

Howard Grimes premeditatedly retaliated Sakkarapope by issuing a series of memoranda leading to the termination of January 31, 2003 from the joint master degree

program in violation of his due process right. The dismissal from the M.S. program was NOT on academic grounds, but a dispute of a program completion deadline. *See* CR 669; App. 455-9 for detail. The University already conceded that:

> ...since the University did not expressly notify Mr. Sakkarapope that "his appeal" was misdirected, WSU does not argue this appeal is untimely...agrees that he has exhausted his administrative remedies since the GSPP does not require he have the matter reviewed by a Graduate Studies Committee. Thus, this matter is ripe for review by the Court. (CP at 991)

The determination of whether Sakkarapope did or did not comply with the school regulations—program completion deadline, is a question of fact. Most importantly, in determining this factual question, reference is not made to a standard of achievement in an esoteric academic field. Scholastic standards are not involved, but rather disputed facts concerning whether Sakkarapope did or did not comply with certain school regulations. This issue adapts itself readily to determination by a fair and impartial "due process" hearing. *See, Brookins v. Bonnell*, 362 F. Supp. 379 (E.D. Pa. 1973). Nonetheless, the University did not afford Sakkarapope a due process hearing.

The dismissal was made by Grimes in retaliation of that Sakkarapope has persistently sought administrative remedies in his IIDP appeal and the requests for disclosure of his educational records. Where the records show that no hearing was ever afforded prior to the dismissal from the master program in statistics, the University has violated Sakkarapope's right to procedural due process of the fourteenth amendment.

D. Jurisdiction of the Courts to Judicial Review of Administrative Decisions

The APA requires that a petition for review to be filed within 30 days after a final administrative decision and that:

> A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged, or available within any other agency authorized to exercise administrative review,... RCW 34.05.534

Thus, the 30 day period of filing a petition for review is not to run until the last administrative remedy as exhausted. The state Supreme Court has consistently held that when an adequate administrative remedy is provided by statute, it must be exhausted before the courts will intervene. *State ex rel. Association of Wash. Indus. v. Johnson*, 56 Wn.2d 407, 353 P.2d 881 (1960); *Sunny Brook Farms v. Omdahl*, 42 Wn.2d 788, 259 P.2d 383 (1953).

The Court of Appeals and the trial court not only ignored the doctrine of exhaustion of administrative remedy, but also misrepresented *LEWIS COUNTY v. PERC*, 31 Wn. App. 853, 644 P.2d 1231 (1982). The term, "a final decision," is a decision upon "consummation of the administrative process." A "consummation of the administrative process" is a due process hearing as defined by the APA, WAC 10-08, WAC 504-04-110. The label, "final," affixed to the action is NOT determinative of its finality, i.e., *Isbrandtsen Co. v. U.S.*, 211 F.2d 51, 55 (D.C. Cir. 1954); *Dept. of Eco. v. Kirkland,* 84 Wn2.d 25, 523 P.2d 1181. Doubts must be resolved in favor of the citizen. *Valley View v. Redmond*, 107 Wn.2d 621, 733 P.2d 182.

Where Sakkarapope was not afforded any due process hearing as protected by the APA and the WSU's decisions of February 1, 2001 and January 31, 2003, did not come from any "consummation of the administrative process", it cannot be said the letters of February 1, 2001, and January 31, 2003, were final agency decisions. The term, "final," in the February 1, 2001, is not determinative of its finality. Where the agency's rules provide a procedure for rehearing or reconsideration, a direct appeal before the Board of Regents,

and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon. *Dept. of Ecology v. Kirkland,* Id. Nothing in the so-called final decisions of February 1, 2001, and January 31, 2003 notified Sakkarapope that a petition for review must be filed with the superior court within 30 days as of those decisions. It is WSU's obligation to afford Mr. Sakkarapope due process in arriving at the decision. *Horowitz*, 435 U.S. at 79-80. (CP 991). Sakkarapope's application for adjudicative proceeding must be either commenced pursuant to RCW 34.05.413 or dispose of it pursuant to RCW 34.05.416.

Where Sakkarapope did not ask the state court to review any academic matter and the dismissal from the master degree program was based on the dispute of a program completion deadline, the trial court affirmed the University's dismissal from the master program based on academic ground. (App. 20-1, 27-8) Where the fact and circumstance did not support such judgment, the state Court of Appeals intentionally affirmed the trial court's decision based on an untimely petition by adopting the January 31, 2003 dismissal by Grime, Dean of Graduate School, as a final agency decision despite WSU did not argue this appeal was untimely. Since Sakkarapope was not afforded a due process hearing and the January 31, 2003 decision did not come from any adjudicative proceeding, it is obvious that the statute of limitation of the 30 day period was never to run.

In the IIDP dismissal, the Court of Appeals considered the decision of February 1, 2001, made by the Interim Provost was final and did not consider the decision of October 10, 2000, made by Dean of the Graduate School, Karen DePauw, as a final order. (CR 164-92) This is an inconsistent and double-standard application and interpretation of rules and the statute. This is a case of the same school/agency and the same student as well as under the same APA and the constitutions.

A trial court abuses its discretion only if the discretion exercised is manifestly unreasonable, exercised on untenable

grounds, or for untenable reasons. *Barfield v. City of Seattle,* 100 Wn.2d 878, 883, 887 676 P.2d 438 (1984)); *Mayer v. Sto Indus., Inc.,* 156 Wn.2d 677, 684, 132 P.3d 115 (2006) (quoting *Associated Mortgage Investors v. G. P. Kent Constr. Co.,* 15 Wn. App. 223, 229, 548 P.2d 558 (1976)). Thus, the courts clearly abused of discretion.

Therefore, the statute of limitation of the 30 day period is tolled during the period of seeking administrative remedies available. RCW 34.05.534, .542(3). Indeed, the 30 day period was never to run in both cases. The agency's decisions are ripe for review by the ignoring of the Board of Regents. Such decision is fully qualifying it as a "final decision" for judicial review. *Dept. of Eco. v. Kirkland* Id. The courts did not lose jurisdiction to review the decisions under the APA. The Court of Appeals has decided a federal question of due process right in such way that conflicts with the settled law—the so-called the doctrines of exhaustion of administrative remedy and the finality of agency decision. The judgments rendered by the trial court and the Court of Appeals were induced from frauds----**constructive fraud, fraud in fact** and **fraud in the inducement**. The Court of Appeals and the trial court's decisions have deprived Sakkarapope's due process and equal protection of the laws and abridged his right of petition, State Cont. Article I Sec. 3 and 4 as well as the Fourteenth Amendment.

E. Frauds and Misrepresentation in a Judgment through an Unauthorized Judicial Proceeding.

"The APA does not expressly authorize summary judgments, but case law has established that agencies may employ summary proceedings." *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.,* 102 Wn. App.1, 14, 979 P.2d 929 (1999). WSU does not have a statute to allow a summary judgment. Such judgment entered is void ab initio and is, in legal effect, no judgment at all. *Rust v. WWSC*, 11 Wn. App. 410, 419, 523 P.2d 204 (1974). The state trial court abused of discretion. *State Ex Rel. Carroll v. Junker*, 79 Wn.2d 12, 26,

482 P.2d 775 (1971). The trial court decision granting a summary judgment through an unauthorized proceeding violates Sakkarapope's due process right; it is abuse of discretion and substantially causes a complete miscarriage of justice. *United States v. Finley*, 301 F.3d 1000, 1007 (9th Cir. 2002). Therefore, the order is unconstitutional. The trial court's judgment was rendered by frauds and misrepresentation in judicial proceedings. The trial court is not authorized to impose additional proceeding, a summary judgment, to diminish Sakkarapope's right of petition and prevent him from obtaining judicial review under RCW 34.05, i.e., RCW 34.05.020, .510, .570 and .590:

Counsel Gordon not only concealed the existing case law in the trial court proceeding, but also intentionally misrepresented the case authority of *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.,* Id., when filing the Brief of Respondent before this court, by citing a portion of the authority to mislead the Court of Appeals. (*See* Brief of Respondent ("BOR," at 16-8). Counsel Gordon committed fraud in fact of law; it is also constituted extrinsic/collateral fraud preventing Sakkarapope from a full, fair opportunity in obtaining judicial review under the APA.

A judicial review of administrative decisions is directly, based on the record before the administrative agency. *Macey v. Department of Employment Sec.,* 110 Wn.2d 308, 311, 752 P.2d 372 (1988); RCW 34.05.510, .570, .510 and .590. The trial court is required to conduct a review in light of the whole records, RCW 34.05.570(3). In the presence of the genuine issues of facts, a summary judgment is not appropriate. CR 52 and 56; *Ruff v. King County*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). The trial court not only found "some genuine issues," "there is extreme merit" and "I see a lot of merit to those issues," (*See* RP 68-77), but also failed to solve the disputes of facts. RCW 34.05.558 and intentionally quashed the two subpoenas and entered a protective order preventing discoveries prevented Sakkarapope's freedom to act and the whole records

presented for review in violation of his due process right, RCW 34.05.558 and RAP 9.13. Summary judgment is granted only if reasonable persons could reach but one conclusion from all the evidence. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005) (citing Atherton Condo. *Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990)). WSU is not entitled to a summary judgment.

The state Supreme Court set a precedent that any statute placing roadblocks in the way of a person's claim against the state having been abandoned violates the Equal Protection Clause or Const. art. 1, 12. *HUNTER v. NORTH MASON HIGH SCH. & SCH. DIST.* 403, 85 Wn.2d 810, 539 P.2d 845 (1975) at 818-19. In dismissing Sakkarapope's Petition for Review, based on the lack of jurisdiction of the 30 day period of filing a petition, the Court of Appeals has decided an important federal question in such way that Sakkarapope's right of petition for judicial reviews, RCW34.05.020, has been diminished or having been abandoned. Such deprivation of rights and liberty interests by the state and/or its actors are prohibited under the Fourteenth Amendment.

F. Frauds and Misrepresentation Result in a Judgment Dismissing the PDA Claim on Procedural Ground

The judgment dismissing the PDA's Claim based on the procedural ground that Sakkarapope did not bring the matter in a motion to show cause was rendered by frauds. A fraud is intentional deception resulting in injury to another. A **constructive fraud** comprises all acts, omissions, and concealment involving legal duty, trust or confidence and resulting in damage to another. A **fraud in fact** is one making a false representation with an evil intent when it causes injury to another. A **fraud in the inducement** is

"fraud which is intended to and which does cause one to render a judgment".*

The Supreme Court is constrained by its own precedents. *SKAGIT SURVEYORS v. FRIENDS*, 135 Wn.2d 542, 543 (1998). The Court of Appeals and the trial court are bounded by the Supreme Court's precedents in *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 94-95, 117 P.3d 1117 (2005) that:

> ...A Show Cause Order Is Optional, Not Mandatory, and Intervention Is Allowed.....We will not erect technical barriers to deny review on the merits when to do so is contrary to the purpose of the PDA....a piecemeal litigation is barred by the doctrine of res judicata, or claim preclusion.....

The Court of Appeals and the trial court must bound and be faithful to the purposes of the APA, PDA and *Spokane Research & Defense Fund v. City of Spokane, Id.* The citing its own opinion reversed by the Supreme Court's ruling was misleading and erroneous and then later adopted the language proposed by the bad-faith state lawyer inconsistent with the purpose and legislative intent of the APA, PDA--RCW 42.17.251 and .255, and the *Spokane Research & Defense Fund v. City of Spokane*, Id. (App. 1-3, 12-14) When a statute is silent on a particular issue, the civil rules govern the procedure. *King County Water Dist. v. City of Renton,* 88 Wn. App. 214, 227, 944 P.2d 1067 (1997). Thus, normal civil procedures are an appropriate method to prosecute a claim under the liberally construed PDA. *Spokane Research & Defense Fund v. City of Spokane*, Id.

A judicial review under RCW 42.17.340 shall be allowed to proceed within the APA to deal with the agency record as authorized under RCW 34.05.590(2) and RCW 34.05.558 to secure the just. Where an order to show cause is **optional**, it is optional, not a procedural, technical barrier for

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* Steven H. Gifis, *Law Dictionary*, 5th Edition, Barron's, 2003.

preventing Sakkarapope's right to judicial review under the PDA incorporated with the APA. The Court of Appeals has decided an important question of state law in such way that conflicts with the purpose and legislative intent of the PDA and APA and violates the equal protection clause under the U.S. Constitution.

G. FERPA Creates a Federal Right to Inspect and Review" Educational Records And A "Federal Due Process Right"

For a statute to create such private rights, its text must be "phased in terms of the persons benefited." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 692, n. 13 (1979). FERPA does create not only rights for both students and their parents, "the right to inspect and review their education records," under 20 U.S.C. §1232g(a), 34 C.F.R. §§99.10-99.12, but also a "federal due process" for enforcing and protecting those rights. *See also*, WAC 504-21-030. The Secretary of the U.S. Department of Education (Secretary) and Mr. Rooker, Director of the Family Policy Compliance Office (FPCO) have administrative duty, not discretionary function, to enforce FERPA and afford a due process to students. 20 U.S.C. §1232g(f) and(g), §1231c, and §1221e-3; 34 C.F.R §§99.60-99.67.

The University intentionally withholds Sakkarapope's educational records subject to disclosure and deprived his federal right to inspect and review of the records, due process rights under both FERPA and PDA. The University also moved in the state trial court to quash his subpoenas of the records and sealed the records of the examinations in disputes by claiming FERPA prohibition for disclosure of the records despite the FPCO's interpretation that FERPA does permit the nonconsensual disclosure of education records in certain limited circumstances, such as when the disclosure is made in compliance with a lawfully issued subpoena or court order. CFR § 99.31(a)(9) The University is not the student or a parent of the student; it has no right to withhold

Sakkarapope's educational records. *See* App. Pet 06-412 at 26-70, 272-348. The failure to perform the administrative duty to enforce FERPA by Mr. Rooker, Director of the Family Policy Compliance Office (FPCO) has deprived Sakkarapope's due process right and right to inspect and review of his educational records. The state Court of Appeals' judgments dismissing the PDA and FERPA were induced from frauds and misrepresentation of facts and laws, as well as counsel misconducts. The state and U.S. Courts of Appeals have decided an important question of federal law.

Therefore, the question sought to be reviewed in this court whether FERPA does create a federal right to inspect and review education records under §1232g(a) and "federal due process" for enforcing and protecting those rights and whether the State, the University, the Secretary and Rooker have deprived Sakkarapope's FERPA rights are important federal questions that should be settled in this court and will have national applications to secure national uniformity of the decisions.

H. The Removal Orders by the Immigration Judge and the Board of Immigration Appeals Are Unconstitutional*

The University promises that Sakkarapope be allowed to complete his master degree but not be allowed to continue in the doctoral program pending the outcome of the appeal process, and it will assure Sakkarapope have appropriate immigration status during the appeal process. (App. 118, 122). After Howard Grimes was promoted to dean of the Graduate School, he began his retaliation campaign leading to the dismissal of January 31, 2003 and premeditatedly utilized a federal mechanism to prevent Sakkarapope's return to and remove Sakkarapope from the United States for its own personal interest. While recognizing the judicial review of the University's decisions and action has been active, the

* *See also*, App. 459-83.

BCIS initiated a removal proceeding at the request of Furnari and using the state trial court's decision of March 5, 2004 as evidence. Grimes and other officials committed official misconduct. RCW 9A.80.010. *See*, App. 454-9, 463-7. The government is barred from removing the alien by equitably estoppel as a result of the government's affirmative misconduct, *INS v. Maranda* (Sup.Ct. 1982); McLeod v. Peterson (3d Cir.1960); *Oscar Scoop-Gonzales v. INS* (9th Cir. 2000), and is barred from removing Sakkarapope by a promissory estoppel as a result of the University's promise.

The Service, Immigration Judge and the BIA do not have jurisdiction to determine Sakkarapope's student status at WSU, but the resolution of his student status is from the finality of the disputes between WSU and Sakkarapope which is under the jurisdiction of the state statute, RCW 34.05. The IJ erroneously interpreted the provision of 8 CFR 214(f), state laws and relevant regulations. One member of the BIA is not authorized to interpret the laws. The BIA violated its streamlining policy because the instant case does not fall within 8 C.F.R §3.1(d)(1) or 8 C.F.R §3.1 (a)(1).

The Record of Deportable/ Inadmissible Alien was premeditatedly initiated by the government with false, inaccurate and illegal information about the alien legal status generated by Grimes and other officials.

While a judicial review of the remedial action was pending in the state trial court, the IJ ignored such outcome of the judicial review potentially providing that Sakkarapope meets the conditions for adjustment to a permanent resident through employment. Nonetheless, the Attorney General continued misled the Court of Appeal by stating that Sakkarapope "lacks...or an employer undermines any potential application that he may someday submit." (Brief for Respondent at 11). Now, the Thurston County Superior Court entered a final judgment reversing the decision of the Personnel Appeals Boards. *See,* App. 89-90. This is an obviously potential employment that Sakkarapope may someday submit application for adjustment of status to that of

permanent resident. A remedial action is a liberty interest created by the state law. Thus, the removal order has deprived Sakkarapope's liberty interest. It is prohibited by the fourteenth Amendment.

All the key issues above are not involved with the prosecutorial discretion, but the interpretation of the statutes and laws, and the constitutionality. The Attorney General is also prohibited to deprive any person's life, liberty or property without due process of law under the fourteenth Amendment. The court retains petition-for-review jurisdiction to review constitutional claims, "even when those claims address a discretionary decision." *Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004 (9th Cir. 2003); *Tovar-Landin v. Ashcroft*, 361 F.3d 1164, 1166 (9th Cir. 2004) (retaining jurisdiction over due process and equal protection challenges to voluntary departure regime); *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 850 (9th Cir. 2003) (retaining jurisdiction on petition for review of denial of cancellation to review due process challenge to streamlining procedure); *Reyes-Melendez v. INS,* 342 F.3d 1001, 1006 (9th Cir. 2003) (retaining jurisdiction insuspension case to review due process challenge based on IJ bias); *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105 (9th Cir. 2003) (retaining jurisdiction over due process claim); *Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000) (retaining jurisdiction and rejecting due process claim that the BIA failed to review all relevant evidence submitted in suspension case). The Court of Appeals has decided an important question of federal law in regard to the removability of Sakkarapope under the INA; 8. C.F.R. 214(f), and the constitutionality of the decision and action by the Attorney General. *See,* App. 43-44. Such dismissal of the Petition for Review for lack of jurisdiction has so departed from the accepted and usual course of judicial proceedings even within its own circuit. Such departure by the U.S. Court of Appeals is to call for an exercise of this Court supervisory power. A writ by this Court will have national implication in regard to the

removability of an international student while he is in judicial proceedings within state and/or federal jurisdiction, and the constitutionality of the decision and/or action by the Attorney General under this instant case.

V. CONCLUSION

Petitioner respectively asks this court to grant a writ and reverse the state and federal Courts of Appeals' decisions and/or remand for further proceedings. It is further asked this Court invalidate the University's dismissals and provide assurance that the disputed examination be properly reviewed. Such invalidation does not constitute a passing or failing any examination.

A consideration by this court will settle all important issues sought to be reviewed and secure a uniformity of national application. It is further requested that this court grant relieves as indicated in the original Complaint/Petitions and the briefs filed in the Courts of Appeals including reasonable costs and expenses.

RESPECTFULLY SUBMITTED this 8th day of January, 2007.

B. Sakkarapope

Benjapon Sakkarapope
Appearing Pro Se Petitioner